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 Plaintiff NATERA, INC.

20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA,

22 SAN FRANCISCO DIVISION

23 GUARDANT HEALTH, INC.,

24 Plaintiff and Counterclaim-
 Defendant,

25 vs.

26 NATERA, INC.,

27 Defendant and Counterclaim-
 28 Plaintiff.

Case No. 3:21-cv-04062-EMC

**JOINT SUBMISSION RE OBJECTIONS
 REGARDING EXHIBITS FOR USE ON
 TRIAL DAY EIGHT (Dkt. Nos. 751 and 719)**

Witnesses called for Day 8, Monday, November 18th, 2024: Dr. Alexey Aleshin, Dr. Aparna Parikh, and Dr. Jeffery Stec.

Natera may use the following exhibits with Dr. Alexey Aleshin: TX-1; TX-94; TX-207; TX-1290; TX-1569; TX-1781; TX-1782. Natera reserves the right to use all documents with Dr. Aleshin that Guardant uses with Dr. Aleshin.

Exhibit No.	Description	Guardant's Objections	Natera's Response	Court's Outcome [leave blank]
TX-1781	Nature Medicine Article - ctDNA-based molecular residual disease and survival in resectable colorectal cancer	Untimely and precluded by Order at Dkt. 719. Journal article was published in Aug. 2024.	In connection with the issue of COBRA, the Court's ruling states that it "is essentially turning back the clock <i>on this issue</i> , viewing the trial as that which would have proceeded in March 2024 in the absence of Natera seeking to submit Dr. Hochster's supplemental testimony on COBRA." Dkt. 719 at 1 (emphasis added). TX-1781 and TX-1782 are documents pertaining to Natera's GALAXY study and are unrelated to the issue of COBRA. Accordingly, these documents are not precluded by the Order at Dkt. 719.	
TX-1782	Genomeweb Article - Natera Links ctDNA Status to Overall Survival, Therapy Response in GALAXY Study Update	Untimely and precluded by Order at Dkt. 719. Sep. 2024 Press Release follows release of journal article at TX-1781.		

Guardant may use the following exhibits with Dr. Alexey Aleshin: TX-1; TX-4; TX-9; TX-38; TX-41; TX-51; TX-57; TX-58; TX-63; TX-64; TX-65; TX-66; TX-74; TX-75; TX-80; TX-81; TX-86; TX-87; TX-109; TX-126; TX-138; TX-147; TX-148; TX-149; TX-150; TX-151; TX-152; TX-153; TX-154; TX-156; TX-157; TX-158; TX-160; TX-165; TX-167; TX-177; TX-

181; TX-224; TX-225; TX-227; TX-238; TX-261; TX-298; TX-381; TX-383; TX-384; TX-385;
TX-390; TX-395; TX-397; TX-400.

Exhibit No.	Description	Natera's Objections	Guardant's Response	Court's Outcome [leave blank]
TX-80	Genentech bake-off	MIL	Court overruled bake-off objection; Trial Tr. at 609-613.	
TX-81	Email re Signatera RUO Presentation Genentech Bake Off - Invite to Comment	MIL	Court overruled bake-off objection; Trial Tr. at 609-613.	
TX-86	Email re Fwd: CRC Bakeoff outcome	MIL	Court overruled bake-off objection; Trial Tr. at 609-613.	
TX-87	ctDNA Sequencing Platform Evaluation - CRC Presurgery Plasma Samples Stage 1-IV	MIL	Court overruled bake-off objection; Trial Tr. at 609-613.	
Aleshin_ Demonstrative		403; Argumentative; Misstates evidence	Facts included in demonstrative will be confirmed with Mr. Aleshin during her testimony.	

Natera may use the following exhibits with Dr. Aparna Parikh: TX-29; TX-504; TX-510; TX-517; TX-520; TX-521; TX-522; TX-523; TX-524; TX-525. Natera reserves the right to use all documents with Dr. Parikh that Guardant uses with Dr. Parikh.

Exhibit No.	Description	Guardant's Objections	Natera's Response	Court's Outcome [leave blank]
TX-522	Email from Seventer re: LUNAR analysis and data	FRE 602. Dr. Parikh is not a recipient of the email or its attachments. Although counsel asked Dr. Parikh to review the email and to confirm the words on the page, and she confirmed that the attachments appeared to contain patient data, Dr. Parikh was not demonstrated to have personal knowledge concerning any of the facts for which these exhibits might be otherwise used to establish.	TX-522 is email correspondence regarding data from Dr. Parikh's study, sent between Dr. Parikh's co-authors; witness has personal knowledge of the study and its results and foundation will be properly laid.	
TX-523	Excel Spreadsheet, LUNAR analysis Final Cohort	FRE 602. Dr. Parikh is not a recipient of the email or its attachments. Although counsel asked Dr. Parikh to review the email and to confirm the words on the page, and she confirmed that the attachments appeared to contain patient data, Dr. Parikh was not demonstrated to have personal knowledge concerning any of the facts for which these exhibits might be otherwise used to establish.	TX-523 is data from Dr. Parikh's study, sent between Dr. Parikh's co-authors; witness has personal knowledge of the study and its results and foundation will be properly laid.	
TX-524	LUNAR analysis PowerPoint	FRE 602. Dr. Parikh is not a recipient of the email or its attachments. Although counsel asked Dr. Parikh to review the email and to confirm the words on the page, and she confirmed that the attachments appeared to contain patient	TX-524 is already admitted; TX-524 is data from Dr. Parikh's study of which she has personal knowledge; foundation will be properly laid.	

		data, Dr. Parikh was not demonstrated to have personal knowledge concerning any of the facts for which these exhibits might be otherwise used to establish.		
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Guardant may use the following exhibits with Dr. Aparna Parikh: TX-5; TX-11; TX-14; TX-15; TX-19; TX-21; TX-22; TX-25; TX-26; TX-28; TX-30; TX-31; TX-32; TX-371; TX-526; TX-527; TX-528.

Natera's deposition designations for Dr. Aparna Parikh's deposition testimony are below.

July 5, 2022 Deposition of Dr. Parikh: 12:18-13:01; 22:22-22:24; 25:16-25:22; 27:04-27:09; 30:04-30:07; 31:18-31:20; 31:22-31:22; 32:12-32:15; 32:17-32:18; 44:20-44:23; 44:25-45:04; 50:16-50:18; 52:15-53:17; 55:01-55:03; 55:07-55:14; 56:20-56:25; 59:04-59:07; 65:12-65:15; 68:15-68:24; 69:04-69:06; 76:03-76:08; 76:09-76:11; 78:19-78:22; 80:06-80:09; 90:15-90:20; 90:22-90:22; 94:09-94:17; 95:01-95:12; 95:14-95:14; 95:16-95:20; 96:15-96:16; 97:04-97:05; 98:17-98:22; 98:23-98:23; 99:02-99:07; 101:16-102:06; 103:02-103:07; 103:10-103:13; 104:10-104:13; 105:23-106:06; 110:09-110:14; 111:23-112:07; 114:04-114:07; 114:13-114:18; 115:11-115:17; 119:22-119:25; 120:04-120:11; 139:04-139:09; 223:13-223:16; 224:25-225:05; 225:07-225:08; 237:13-237:19; 237:21-237:24.

July 9, 2024 Deposition of Dr. Parikh: 51:03-51:04; 51:06-51:13; 88:20-88:21; 88:23-89:14; 90:08-91:07; 91:08-92:15; 93:12-94:01.

Guardant makes the following objections to Natera's designations of the depositions of Dr. Parikh.

July 5, 2022 Deposition of Dr. Parikh:

Designation	Guardant's Objections	Natera's Response	Court's Outcome [leave blank]
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90:15-20, 22	Barred by Court's MSJ Ruling concerning ONY; Trial Tr. 935-939	Relevant to showing the Parikh paper was not prospective or blinded.	
111:23 – 112:7	Barred by Court's MSJ Ruling concerning ONY; Trial Tr. 935-939.	Relevant to showing the Parikh paper was not prospective or blinded.	

July 9, 2024 Deposition of Dr. Parikh:

Designation	Guardant's Objections	Natera's Response	Court's Outcome [leave blank]
51:3-4, 6-13	Precluded by Order at Dkt. 719. Testimony is in reference to, and in context of, information given to Dr. Morris and NRG as part of the COBRA trial.	Relevant to Natera's affirmative claims and unrelated to COBRA; Parikh admits that "Reveal doesn't have 100 percent PPV." In refusing to bring Dr. Parikh to trial, Guardant's counsel stated, "They've deposed her twice, including very recently, and they're free to designate the first deposition and the second deposition." Trial Tr., Vol. 5, p. 1146:10-12.	
91:08-92:15	Precluded by Order at Dkt. 719. Dr. Parikh's testimony concerns the reasons behind her change in ordering habits in July 2024, which include the publication of "GALAXY over the last two years."		

Guardant's deposition designations for Dr. Aparna Parikh's deposition testimony are below.

July 5, 2022 Deposition of Dr. Parikh: 121:5-7, 15-18; 122:4-9; 123:11-19; 126:3-7; 136:10-13; 136:15-137:1; 137:4-5; 145:6-23; 150:21-22; 150:25-151:11; 156:21-157:17; 157:19-

158:3; 158:17-18, 20-22; 159:12-19; 160:21-24; 161:1-2; 162:23-163:4; 187:1-21; 189:25-190:3;
 190:5-8; 193:11-15; 194:3-5, 18-23; 195:5-24; 196:8-18; 198:17-199:22; 208:18-20; 208:22-
 209:10; 210:2-7; 213:20-21; 213:23-214:19; 215:17-21; 215:23-216:12; 250:2-6, 14-16; 251:9-
 16; 251:18-252:4; 253:25-254:1; 254:3-11; 260:17-25

July 9, 2024 Deposition of Dr. Parikh: 94:2-21

Natera makes the following objections to Guardant's designations of the depositions of Dr. Parikh.

July 5, 2022 Deposition of Dr. Parikh:

Designation	Natera's Objections	Guardant's Response	Court's Outcome [leave blank]
121:5-7, 15-18	R, 403, H, Beyond the scope of direct	Completeness. Introduction and Testimony about Dr. Parikh's background – asked about in Natera's testimony in Natera's designations.	
122:4-9	R, 403, H, Beyond the scope of direct	Completeness. Testimony about Dr. Parikh's clinical practice in Natera's designations.	
123:11-19	403, H, 702, Legal conclusion	Rebuttal - Testimony about Natera's allegations and challenges to her paper – discussed in Natera's designations.	
136:10-13	R, 403, H	Completeness. introduction and Testimony about Dr. Parikh's background – asked about in Natera's designations.	
136:15-137:1	R, 403, H, Leading	Completeness. Natera sought testimony from Dr. Parikh about her work for Guardant and Natera.	
137:4-5	R, 403, H, Leading	Completeness. Natera sought testimony from Dr. Parikh about her work for Guardant and Natera.	

1	145:6-23	R, 403, H, Beyond the scope of direct	Completeness. Introduction and Testimony about Dr. Parikh's background – asked about in Natera's testimony in Natera's designations.	
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4	150:21-22	R, 403, H	Completeness. Testimony about Dr. Parikh's conclusions in her study in Natera's designations.	
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7	150:25-151:11	R, 403, H	Completeness. Testimony about Dr. Parikh's conclusions in her study in Natera's designations.	
8				
9	156:21-157:17	R, 403, H, Leading	Completeness. Testimony about Exhibit Natera introduced.	
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11	157:19-158:3	R, 403, H, Leading	Completeness. Testimony about Exhibit Natera introduced.	
12				
13	158:17-18, 20-22	R, 403, H, Leading	Completeness. Testimony about Exhibit Natera introduced.	
14				
15	159:12-19	R, 403, H, Leading	Completeness. Testimony about Exhibit Natera introduced.	
16				
17	187:1-21	R, 403, H	Completeness/rebuttal. Testimony about topic Natera introduced.	
18				
19	189:25-190:3	R, 403, H	Completeness/rebuttal. Testimony about topic Natera introduced.	
20				
21	190:5-8	R, 403, H	Completeness/rebuttal. Testimony about topic Natera introduced.	
22				
23	193:11-15	R, 403, H, Beyond the scope of direct	Completeness/rebuttal. Testimony about Letter to the Editor Natera sent after communications Natera had with Dr. Parikh – discussed in Natera's designations.	
24				
25	194:3-5, 18-23	R, 403, H	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera's designations.	
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27				
28	195:5-24	R, 403, H, Beyond the scope of direct	Completeness/rebuttal. Testimony about Letter to the Editor Natera sent after	

		communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
196:8-18	R, 403, H	Completeness/rebuttal. Testimony about Letter to the Editor Natera sent after communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
198:17-199:22	R, 403, H	Completeness/rebuttal. Testimony about Letter to the Editor Natera sent after communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
208:18-20	R, 403, H	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
208:22-209:10	R, 403, H, Leading	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
210:2-7	R, 403, H, Leading	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
213:20-21	R, 403, H, Leading	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
213:23-214:19	R, 403, H, Leading	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	

1	215:17-21	R, 403, H, Beyond the scope of direct	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
2				
3	215:23-216:12	R, 403, H, Leading, Beyond the scope of direct	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
4				
5	250:2-6, 14-16	R, 403, H, Leading, Beyond the scope of direct	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
6				
7	251:9-16	R, 403, H, Leading, Beyond the scope of direct	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
8				
9	251:18-252:4	R, 403, H, Beyond the scope of direct	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
10				
11	253:25-254:1	R, 403, H, Beyond the scope of direct	Completeness/rebuttal. Testimony about Dr. Parikh's responses to Natera’s challenges to her paper – discussed in Natera’s designations.	
12				
13	254:3-11	R, 403, H, 702, Beyond the scope of direct	Completeness/rebuttal. Testimony about communications Natera had with Dr. Parikh – discussed in Natera’s designations.	
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15	260:17-25	R, 403, H	Completeness/rebuttal. Testimony about earlier question Natera asked of Dr. Parikh.	
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July 9, 2024 Deposition of Dr. Parikh:

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26	Designation	Natera’s Objections	Guardant’s Response	Court’s Outcome [leave blank]
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94:2-21	R, 403, H, Beyond the scope of direct	Completeness/rebuttal. Testimony about Dr. Parikh's reliance on data in making ordering decisions was solicited by Natera in the immediately preceding testimony.	
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Natera may use the following exhibits with Dr. Jeffery Stec: TX-98; TX-204; TX-205; TX-210; TX-216; TX-217; TX-219; TX-284; TX-285; TX-360; TX-418; TX-419; TX-429; TX-430; TX-431; TX-432; TX-433; TX-652; TX-653; TX-748; TX-808; TX-809; TX-811; TX-813; TX-816; TX-817; TX-819; TX-1310; TX-1311; TX-1313; TX-1315; TX-1475; TX-1576; TX-1618; TX-1624; TX-1625; TX-1626; TX-1627; TX-1783; TX-1806; and demonstratives DDX9. Natera reserves the right to use all documents with Dr. Stec that Guardant uses with Dr. Stec.

Guardant may use the following exhibits with Dr. Jeffery Stec: TX-42; TX-43 TX-48; TX-49; TX-53; TX-63; TX-69; TX-76; TX-91; TX-92; TX-94; TX-95; TX-96; TX-97; TX-98; TX-99; TX-108; TX-109; TX-110; TX-111; TX-112; TX-117; TX-119; TX-120; TX-121; TX-122; TX-124; TX-126; TX-127; TX-128; TX-129; TX-130; TX-131; TX-132; TX-134; TX-135; TX-136; TX-137; TX-150; TX-152; TX-204; TX-205; TX-210; TX-212; TX-216; TX-217; TX-219; TX-220; TX-221; TX-275; TX-276; TX-286; TX-334; TX-360; TX-365; TX-366; TX-418; TX-419; TX-421; TX-427; TX-428; TX-429; TX-433; 1618; TX-1624; TX-1625; TX-1626; TX-1627.

Exhibit No.	Description	Natera's Objections	Guardant's Response	Court's Outcome [leave blank]
TX-127	Letter re: Natera's Misrepresentations Concerning the Guardant Reveal Liquid Biopsy Test	R, 403, H	Formal cease and desist letter delivered to company; important to show that	

			marketing did not change following receipt of detailed information regarding nature of false advertising; not offered for truth.	
TX-132	Joint Statement Regarding Plaintiff Guardant Health, Inc.'s Motion for Preliminary Injunction	R, MIL 4, 403, BRPL	Relevant to Guardant's claim for corrective advertising and any argument concerning mitigation. Guardant has requested an instruction concerning its inability to correct via comparative advertising pursuant to this Joint Statement.	
TX-286	Emails re: Tumor-informed vs Tumor uninformed	FN, Scope, 403	Compilation of emails Guardant alleges constitute false advertising; quantity and extent of advertising is relevant to damages; already used in trial and at least some portions admitted.	

1 Additionally, Natera discloses the following admitted exhibits that it may use with Dr.
2 Betensky: TX-501, TX-502, TX-507, TX-509, TX-510, TX-511, and TX-568. Additionally,
3 Natera discloses the following exhibit that it may use with Dr. Metzker: TX-517. Guardant
4 objects to the introduction of these belatedly disclosed exhibits. Specifically, Guardant has had
5 no opportunity to review these exhibits or to confer with opposing counsel concerning same.
6

7 Natera intends to read Guardant's Response to Interrogatory No. 25 into evidence and
8 admit the documents it cites, TX-1808, TX-1809, TX-1810, and TX-1811. (TX-1810 is already
9 in evidence.) Guardant objects that Natera provided notice at 11:13 pm on November 14, that it
10 intended to read in Interrogatory No. 25. Guardant objects to the introduction of TX-1808, TX-
11 1809, and TX-1811 via Interrogatory No. 25. The Interrogatory is subject to preserved objections
12 that have not been resolved, and addresses statements the Court held are inactionable puffery.
13 Moreover, without a competent witness to explain what the documents referenced in the
14 response represent, there is a substantial risk of jury confusion and substantial prejudice to
15 Guardant. Guardant objects for relevance, and under FRE 403.
16

17 Natera timely designated the discovery response as one it may introduce at trial. All of
18 the cited exhibits in the interrogatory are in the same form, and one has already been admitted
19 into evidence. The testimony about that exhibit (TX 1810) and the explanation of the documents
20 in the interrogatory response itself make the content of the documents clear.
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1 DATED: November 15, 2024

2 QUINN EMANUEL URQUHART &
3 SULLIVAN, LLP

4 By /s/ Ryan Landes

Ryan Landes

5 QUINN EMANUEL URQUHART &
6 SULLIVAN, LLP

7 Attorneys for Defendant and Counterclaim-
8 Plaintiff, NATERA, INC.

9
10
11 Dated: November 15, 2024

A&O SHEARMAN

12
13 By: /s/ Saul Perloff

14 Saul Perloff

15 Attorney for Plaintiff/Counter-Defendant
16 GUARDANT HEALTH, INC.

FILER'S ATTESTATION

Pursuant to Civil LR 5.1(i)(3), the undersigned hereby attests that concurrence in the filing of this **JOINT SUBMISSION RE EXHIBIT OBJECTIONS DAY EIGHT** has been obtained from counsel for Guardant Health, Inc. and is electronically signed with the express permission of Guardant Health, Inc.'s counsel.

Date: November 15, 2024

By: /s/ Ryan Landes

Attorney for Defendant/Counter-Plaintiff
NATERA, INC.